

F-8070



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Thomas HAEUPL, et al.

Serial No. : 10/727,167

For : TOOLS FOR THE DIAGNOSIS, MOLECULAR DEFINITION  
AND DEVELOPMENT OF TREATMENT OF CHRONIC  
INFLAMMATORY DISEASES

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF HELMUT WEHLAN IN SUPPORT OF PETITION UNDER  
37 C.F.R. §1.181 PURSUANT TO 35 U.S.C. 116 AND 37 C.F.R § 1.47(a)**

Sir:

Helmuth Wehlan, having a mailing address at the firm of patent attorneys, Wehlan & Wehlan, Paul-Gesche-Strasse 1, D-10315 Berlin, Germany, declares and states as follows:

1. I am a German and European patent attorney and represents the three co-inventors in the present application.
2. Thomas HAEUPL is one of three co-inventors, together with Ute UNGETHUEM and Stefan BLAESS, of the subject matter of the application, which is a Continuation Application of prior Application Serial No. PCT/DE02/02010, filed May 30, 2002, now pending.
3. All three co-inventors have assigned the German Priority Application No. 101 27 572.2 – claimed in PCT/DE02/02010 – to the Oligene GMBH. A copy of that Assignment which are in German, together with verified English translations thereof are appended hereto as Exhibit A.
4. Thomas HAEUPL has assigned all his rights and interest in the present application to the Oligene GMBH, a corporation existing under the laws of Germany, located at Schumannstrasse 20/21, D-10117 Berlin, Germany, The Assignment was executed on March 10, 2004. A copy of that Assignment from Thomas HAEUPL to Oligene GMBH is appended hereto as Exhibit B.

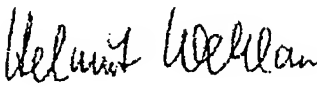
5. Co-inventors Ute UNGETHUEM and Stefan BLAESS did not execute that Assignment, nor have they executed any other Assignment of their respective rights and interest in the present application to Oligene GMBH or, on information and belief, to any other individual or entity.
6. Stefan BLAESS has indicated his refusal to execute a DECLARATION in the present case.
7. Ute UNGETHUEM has been approached on several occasions to solicit her to execute a Declaration in the present case, however, she has ignored such repeated requests that she execute said Declaration, and it is assumed that she too is effectively refusing to cooperate and execute such a Declaration.
8. Thomas HAEUPL as the only one of the original three named co-inventors of the application who is presently being cooperative, has a proprietary interest in the application to warrant his making the application for patent.
9. The action of Thomas HAEUPL making the application for the present application on behalf of and as agent for co-inventors Ute UNGETHUEM and Stefan BLAESS, who respectively explicitly and constructively, refuse to join in the application and sign a Declaration is both proper under 35U.S.C. 1.118 pursuant to which Mr. HAEUPL is a person who otherwise shows sufficient proprietary interest in the matter justifying such action; and proper under 37 C.F.R. 1.47 (a). In the first instance, the action is necessary for Thomas HAEUPL, as a co-inventor of the application, to prevent irreparable damage that would result if the application were to become abandoned because of the lack of a filed Declaration executed by all three of the co-inventors, namely, economic harm to Mr. HAEUPL's assignee, Oligene GMBH.
10. Upon information and belief, Mr. BLAESS' reason for not joining in the application and executing a Declaration, or for assigning his rights and interest in the application to the Oligene GMBH, arises from some grounds of disagreement with the Oligene GMBH, of unknown specific nature.
11. Ms. UNGETHUEM's reasons for disregarding attempts to contact her regarding solicitation to join in the application and execute a Declaration in the subject case, and assign her rights and interests in the application the Oligene GMBH, are known only to herself at this time.
12. Since November 10, 2003, additional attempts to have both Stefan BLAESS and Ute UNGETHUEM execute a Declaration for the subject application.
13. Cover letters with instructions to sign a therewith enclosed Declaration and an Assignment for patent application for the present application, Serial No 10/727,167,

were sent individually to Stefan BLAESS and Ute UNGETHUEM by mail, to their last known addresses, respectively, Furkastrasse 74, D-12107 Berlin, Germany and Chausseestrasse 93, D-10115 Berlin, Germany. A copy of said letters which are in German, together with verified English translations thereof are appended hereto as Exhibits C and D, respectively.

14. Mr. BLAESS has received the letter of November 10, 2003. On January 19 and 30, 2004 he declared in an eMail that he will not sign the declaration and the assignment.
15. An attempt was made by eMail to Mr. BLAESS on March 9 and May 4, 2004. Mr. BLAESS answered on May 7, 2004. He has not changed his opinion.
16. To date, Stefan BLAESS has not acted thereupon and has not returned an executed Declaration or Assignment regarding the present application to the undersigned, nor has he communicated further with the undersigned or with his fellow co-inventor, Thomas HAEUPL, or with the Oligene GMBH, regarding his intentions about same.
17. Three attempts were made by eMail to Ms. UNGETHUEM on February 10 March 9 and May 4, 2004. We did not received an answer.
18. An attempt was made by the German Postal Service (DEUTSCHE POST AG), on May 19, 2004, to deliver the letter and accompanying materials described in paragraph 3 above to Ute UNGETHUEM at her last known and believed current address. The letter was send via verified mail. Ms. UNGETHUM has received the letter. The advice of receipt is enclosed as Exhibit E.
19. To date, Ute UNGETHUEM has not acted thereupon and has not returned an executed Declaration or Assignment regarding the present application to the undersigned, nor has she communicated further with the undersigned or with her fellow co-inventor, Thomas HAEUPL, or with the Oligene GMBH, regarding her intentions about same.
20. A Declaration for the present application has been executed by Thomas HAEUPL on his own behalf and again, on behalf of and as agent for Stefan BLAESS and Ute UNGETHUEM under 35 USC 118 and 37 CFR 1.47 (a), and a copy thereof is appended hereto as Exhibit F.
21. The undersigned hereby declares that all statements made herein are based on my own knowledge and are true and all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Executed on August 17, 2004

Respectfully submitted,

By 

Helmut Wehlan

## Exhibit A

BEST AVAILABLE COPY

### Übertragungs-Erklärung

Die unterzeichnenden Anmelder der Patentanmeldung Az 101 27572.2 vom 30.05.2001

"Werkzeuge zur Diagnostik, molekularen Definition und Therapieentwicklung chronischer entzündlicher Gelenkerkrankungen"

Herr Dr. Thomas Häupl, Am Schützenwäldchen 59, D-15537 Erkner

Frau Dr. Ute Ungethüm, Chausseestr. 93, D-10115 Berlin

Herr Dr. Stefan Bläß, Furkastr. 74, D-12107 Berlin.

übertragen die genannte Patentanmeldung mit allen Rechten und Pflichten auf die Firma

PathoArray GmbH

Jägerstr. 51

D-10117 Berlin

und erklären sich gleichzeitig mit der Umschreibung auf die Erwerberin im Register des Deutschen Patent- und Markenamtes einverstanden. Unter der Anmelderin PathoArray GmbH werden Dr. Thomas Häupl mit einem Anteil von 33%, Dr. Ute Ungethüm mit einem Anteil von 34% und Dr. Stefan Bläß mit einem Anteil von 33% in dieser Reihenfolge als Erfinder benannt.

Berlin, den

25. Jan. '02

Dr. Thomas Häupl

Dr. Ute Ungethüm

Dr. Stefan Bläß

### Annahme-Erklärung

Mit der Übertragung der Patentanmeldung Az 101 27572.2 vom 30.05.01

"Werkzeuge zur Diagnostik, molekularen Definition und Therapieentwicklung chronischer entzündlicher Gelenkerkrankungen"

der Anmelder

Herr Dr. Thomas Häupl, Am Schützenwäldchen 59, D-15537 Erkner

Frau Dr. Ute Ungethüm, Chausseestr. 93, D-10115 Berlin

Herr Dr. Stefan Bläß, Furkastr. 74, D-12107 Berlin.

auf die Firma

PathoArray GmbH

Jägerstr. 51

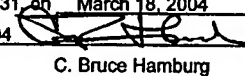

D-10117 Berlin

erklären wir uns einverstanden und beantragen die Umschreibung im Register des Deutschen Patent- und Markenamtes.

Berlin, den

Ingo von Balluseck  
Geschäftsführer

# Exhibit B

Form PTO 1595 1-31-82	<b>RECORDATION FORM COVER SHEET</b> <b>PATENTS ONLY</b>	U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office <b>F-8070</b>
To the Director of the U.S. Patents and Trademarks: Please record the attached original documents or copy thereof.		
<b>1. Name of conveying party(ies):</b> 1. Thomas HAEUPL  Additional name(s) of conveying party(ies) attached? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<b>2. Name and address of receiving party(ies):</b> Name: Oligene GmbH Internal Address:  Street Address: Schumannstrasse 20/21 10117 Berlin, Germany  Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>3. Nature of conveyance:</b> <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other  Execution Date: <u>1. March 10, 2004</u>		
<b>4. Application number(s) or patent number(s):</b> If this document is being filed together with a new application, the filing date of the application is December 1, 2003		
<b>A. Patent Application No.(s)</b> 10/727,167	<b>B. Patent No.(s)</b>  I hereby certify that this correspondence is being deposited with the United States Postal Services as First Class Mail in an envelope addressed to: Commissioner Of Patents and Trademarks, Washington, D.C. 20231, on <u>March 18, 2004</u> Dated: <u>March 18, 2004</u>  <div style="text-align: right;">C. Bruce Hamburg 22,389</div>	
Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>5. Name and address of party to whom correspondence concerning document should be mailed:</b>  Name: <u>C. Bruce Hamburg, Esq.</u> Internal Address: <u>Jordan and Hamburg LLP</u> <u>Chanin Building</u> <u>Suite 4000</u> Street Address: <u>122 East 42nd Street</u>  City: <u>New York</u> State: <u>New York</u> Zip: <u>10168</u>	<b>6. Total number of applications and patents involved:</b> 1 <input type="checkbox"/>  <b>7. Total fee (37 CFR 3.41):</b> .....\$ <u>40.00</u> <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account <u>10-1250</u>  <b>8. Charge any excess or credit any refund to the same deposit account number indicated above.</b>	
<b>DO NOT USE THIS SPACE</b>		
<b>9. Statement and signature.</b>  <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i>  <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <u>C. Bruce Hamburg, Esq.</u>          Name of Person Signing       </div> <div style="width: 30%; text-align: center;">           Signature       </div> <div style="width: 30%; text-align: right;"> <u>March 18, 2004</u>          Date       </div> </div> <div style="text-align: right; margin-top: 10px;">         Total number of pages including cover sheet, attachments, and documents: <span style="border: 1px solid black; padding: 2px 5px;">2</span> </div>		

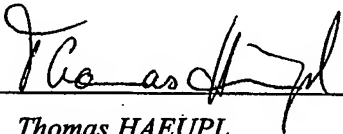
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Mail documents to be recorded with required cover sheet information to:  
 Director of the U.S. Patents & Trademarks Office, Mail Stop Assignment Recordation Services  
 P.O. Box 1450

Alexandria, VA 22313-1450

## ASSIGNMENT

For value received, I, **Thomas HAEUPL**, an individual, residing at Am Schützenwäldchen 59, 15537 Erkner, Germany; I, **Ute UNGETHUEM**, an individual, residing at Chausseestrasse 93, 10115 Berlin, Germany; I, **Stefan BLAESS**, an individual, residing at Furkastrasse 74, 12107 Berlin, Germany, hereinafter assignors, hereby sell, assign and transfer to **Oligene GMBH**, a corporation existing under the laws of Germany, located at Schumannstrasse 20/21, 10117 Berlin, Germany, hereinafter assignee, and said assignee's successors, assigns, and legal representatives the entire right, title, and interest, for all countries including the United States of America, in and to certain inventions relating to **TOOLS FOR THE DIAGNOSIS, MOLECULAR DEFINITION AND DEVELOPMENT OF TREATMENT OF CHRONIC INFLAMMATORY JOINT DISEASES** described in an application for Letters Patent of the United States, executed by said assignors respectively concurrently herewith, and all patents which may be granted therefor, and all divisions, reissues, continuations and extensions thereof, and authorize and request the Commissioner of Patents and Trademarks to issue all patents on said improvements or resulting therefrom to said assignee as assignee of the entire interest, and covenant that said assignors have full right so to do, and agree that said assignors will communicate to said assignee or said assignee's representatives any facts known to said assignors respecting said improvements and testify in any legal proceedings, sign all lawful papers, execute all divisional, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid said assignee, and said assignee's successors, assigns, and nominees, to obtain and enforce proper protection for said invention in the United States.

Signature  Date 10.3.2004  
Thomas HAEUPL

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Ute UNGETHUEM

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Stefan BLAESS

Exhibit C

**PATENTANWÄLTE WEHLAN & WEHLAN**

*Patente • Marken • Lizenzen • Muster*

**Dr. rer. nat. Helmut Wehlan**

European Patent Attorney

**Dr. rer. nat. Martin Wehlan**

Patentanwalt

Dr. Helmut Wehlan / Dr. Martin Wehlan  
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{Tel. auch -priv.-(030)52698268}

Fax: (030)52279976  
Dr. Martin Wehlan:  
e-mail: wehlan@snafu.de

Herrn  
Dr. Stefan Bläß  
Furkastr. 74  
D-12107 Berlin

10315 Berlin, den 10. November 2003

Unser Zeichen: 0250

**Internationale Patentanmeldung vom 30.05.2002: Az. PCT/DE 02/02010**  
**"Werkzeuge zur Diagnostik, molekularen Definition und Therapieentwicklung**  
**chronischer entzündlicher Gelenkerkrankungen"**

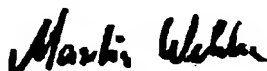
Nationale Phase USA

Sehr geehrter Herr Doktor Bläß,

die Firma Oligene GmbH hat uns beauftragt, aus der o.g. PCT-Anmeldung die nationale Phase in den Vereinigten Staaten von Amerika einzuleiten. Dazu benötigen wir die Unterschriften aller Erfinder. Wir bitten Sie, die beiliegende Declaration auf der Seite 3 sowie das Assignment mit Vor- und Zunamen zu unterschreiben und an uns zurückzusenden.

Für Rückfragen stehen wir gern zur Verfügung.

Mit freundlichen Grüßen



Anlage



## Exhibit D

### **PATENTANWÄLTE WEHLAN & WEHLAN**

*Patente • Marken • Lizenzen • Muster*

**Dr. rer. nat. Helmut Wehlan**

European Patent Attorney

**Dr. rer. nat. Martin Wehlan**

Patentanwalt

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Fax: (030)52279976  
Dr. Martin Wehlan:  
e-mail: wehlan@snafu.de

Frau  
Dr. Ute Ungethüm  
Chausseestr. 93  
D-10115 Berlin

10315 Berlin, den 10. November 2003

Unser Zeichen: 0250

**Internationale Patentanmeldung vom 30.05.2002: Az. PCT/DE 02/02010**  
**"Werkzeuge zur Diagnostik, molekularen Definition und Therapieentwicklung**  
**chronischer entzündlicher Gelenkerkrankungen"**

Nationale Phase USA

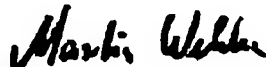
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Sehr geehrte Frau Doktor Ungethüm,

die Firma Oligene GmbH hat uns beauftragt, aus der o.g. PCT-Anmeldung die nationale Phase in den Vereinigten Staaten von Amerika einzuleiten. Dazu benötigen wir die Unterschriften aller Erfinder. Wir bitten Sie, die beiliegende Declaration auf der Seite 3 sowie das Assignment mit Vor- und Zunamen zu unterschreiben und an uns zurückzusenden.

Für Rückfragen stehen wir gern zur Verfügung.

Mit freundlichen Grüßen



Anlage

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15. 40110 PURS 000-800-115  
Vom Abs. 11.